

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANGELINA R. E.,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting
Commissioner of Social Security,

Defendant.

NO. 1:22-CV-3065-TOR

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary judgment (ECF Nos. 11, 12). Plaintiff is represented by D. James Tree. Defendant is represented by SAUSA David J. Burdett. This matter was submitted for consideration without oral argument. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, the Court **DENIES** Plaintiff's motion and **GRANTS** Defendant's motion.

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JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3).

STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited: the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158-59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means relevant evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one rational interpretation, [the Court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674

1 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an
2 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless
3 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”
4 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s
5 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
6 *Sanders*, 556 U.S. 396, 409-10 (2009).

7 **FIVE STEP SEQUENTIAL EVALUATION PROCESS**

8 A claimant must satisfy two conditions to be considered “disabled” within
9 the meaning of the Social Security Act. First, the claimant must be unable “to
10 engage in any substantial gainful activity by reason of any medically determinable
11 physical or mental impairment which can be expected to result in death or which
12 has lasted or can be expected to last for a continuous period of not less than 12
13 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s
14 impairment must be “of such severity that [he or she] is not only unable to do [his
15 or her] previous work[,] but cannot, considering [his or her] age, education, and
16 work experience, engage in any other kind of substantial gainful work which exists
17 in the national economy.” 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

18 The Commissioner has established a five-step sequential analysis to
19 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §
20 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s work

1 activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in “substantial
2 gainful activity,” the Commissioner must find that the claimant is not disabled. 20
3 C.F.R. § 416.920(b).

4 If the claimant is not engaged in substantial gainful activities, the analysis
5 proceeds to step two. At this step, the Commissioner considers the severity of the
6 claimant’s impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from
7 “any impairment or combination of impairments which significantly limits [his or
8 her] physical or mental ability to do basic work activities,” the analysis proceeds to
9 step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not satisfy
10 this severity threshold, however, the Commissioner must find that the claimant is
11 not disabled. *Id.*

12 At step three, the Commissioner compares the claimant’s impairment to
13 several impairments recognized by the Commissioner to be so severe as to
14 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §
15 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the
16 enumerated impairments, the Commissioner must find the claimant disabled and
17 award benefits. 20 C.F.R. § 416.920(d).

18 If the severity of the claimant’s impairment does meet or exceed the severity
19 of the enumerated impairments, the Commissioner must pause to assess the
20 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),

1 defined generally as the claimant's ability to perform physical and mental work
2 activities on a sustained basis despite his or her limitations (20 C.F.R. §
3 416.945(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

4 At step four, the Commissioner considers whether, in view of the claimant's
5 RFC, the claimant is capable of performing work that he or she has performed in
6 the past ("past relevant work"). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is
7 capable of performing past relevant work, the Commissioner must find that the
8 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of
9 performing such work, the analysis proceeds to step five.

10 At step five, the Commissioner considers whether, in view of the claimant's
11 RFC, the claimant is capable of performing other work in the national economy.
12 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner
13 must also consider vocational factors such as the claimant's age, education and
14 work experience. *Id.* If the claimant is capable of adjusting to other work, the
15 Commissioner must find that the claimant is not disabled. 20 C.F.R. §
16 416.920(g)(1). If the claimant is not capable of adjusting to other work, the
17 analysis concludes with a finding that the claimant is disabled and is therefore
18 entitled to benefits. *Id.*

19 The claimant bears the burden of proof at steps one through four above.
20 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to

1 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
2 capable of performing other work; and (2) such work “exists in significant
3 numbers in the national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*,
4 700 F.3d 386, 389 (9th Cir. 2012).

5 **ALJ’S FINDINGS**

6 On October 10, 2019, Claimant protectively filed an application for Title
7 XVI supplemental security income benefits, alleging a disability onset date of
8 October 1, 2019. Tr. 15. The application was denied initially, Tr. 50-59, and on
9 reconsideration, Tr. 60-70. Claimant appeared at a telephonic hearing before an
10 administrative law judge (“ALJ”) on May 19, 2021. Tr. 28-49. On May 26, 2021,
11 the ALJ denied Plaintiff’s claim. Tr. 15-23.

12 At step one of the sequential evaluation analysis, the ALJ found Claimant
13 had not engaged in substantial gainful activity since October 10, 2019, the
14 application date. Tr. 17. At step two, the ALJ found Claimant had the following
15 severe impairments: depressive disorder, posttraumatic stress disorder (PTSD), and
16 polysubstance dependence. *Id.* At step three, the ALJ found that Claimant’s
17 impairments did not meet or medically equal the severity of a listed impairment.
18 Tr. 17-18. The ALJ then found that Claimant had the RFC to perform a full range
19 of work at all exertional levels but with the following nonexertional limitations:

20 [S]he can understand, remember and carry out simple instructions and
exercise simple workplace judgment; she can perform work

1 that is learned by on the job training beyond a short demonstration
2 lasting up to and including one month; she can respond appropriately
3 to supervision but should not be required to work in close
4 coordination with coworkers where teamwork is required; she can
5 deal with occasional changes in the work environment; and she can
6 work in jobs that require no interaction with the public to perform
7 work tasks but does not preclude working environment where the
8 public is present.

9 Tr. 19.

10 At step four, the ALJ found that Claimant had no past relevant work. Tr. 22.
11 At step five, the ALJ found, based on Claimant's age, education, work experience,
12 and residual functional capacity, there were jobs that existed in significant numbers
13 in the national economy that Claimant could perform, such as industrial cleaner,
14 vehicle cleaner, and salvage laborer. Tr. 22-23. The ALJ concluded Claimant was
15 not under a disability, as defined in the Social Security Act, from October 10, 2019
16 through May 26, 2021, the date of the ALJ's decision. Tr. 23.

17 On March 18, 2022, the Appeals Council denied review, Tr. 1-3, making the
18 ALJ's decision the Commissioner's final decision for purposes of judicial review.
19 *See* 42 U.S.C. § 1383(c)(3).

20 ISSUES

21 Claimant seeks judicial review of the Commissioner's final decision denying
22 him supplemental security income benefits under Title XVI of the Social Security
23 Act. Claimant raises the following issues for this Court's review:

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- 1 1. Whether the ALJ reversibly erred by improperly rejecting Claimant's
- 2 symptom testimony for reasons that were not clear and convincing; and
- 3 2. Whether the ALJ reversibly erred by improperly evaluating the medical
- 4 opinion evidence.

5 ECF No. 11 at 2.

6 **DISCUSSION**

7 **A. Subjective Symptom Testimony**

8 Claimant contends the ALJ failed to rely on clear and convincing reasons to
9 discredit Claimant's subjective symptom testimony. ECF Nos. 11 at 4–10; 15 at
10 2–4.

11 An ALJ engages in a two-step analysis to determine whether to discount a
12 claimant's testimony regarding subjective symptoms. SSR 16-3p, 2016 WL
13 1119029, at *2. "First, the ALJ must determine whether there is 'objective
14 medical evidence of an underlying impairment which could reasonably be
15 expected to produce the pain or other symptoms alleged.'" *Molina*, 674 F.3d at
16 1112 (quoting *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)). "The
17 claimant is not required to show that [the claimant's] impairment 'could reasonably
18 be expected to cause the severity of the symptom [the claimant] has alleged; [the
19 claimant] need only show that it could reasonably have caused some degree of the
20 symptom.'" *Vasquez*, 572 F.3d at 591 (quoting *Lingenfelter v. Astrue*, 504 F.3d

1 1028, 1035–36 (9th Cir. 2007)).

2 Second, “[i]f the claimant meets the first test and there is no evidence of
3 malingering, the ALJ can only reject the claimant’s testimony about the severity of
4 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
5 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
6 omitted). General findings are insufficient; rather, the ALJ must identify what
7 symptom claims are being discounted and what evidence undermines these claims.
8 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v.*
9 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
10 explain why he or she discounted claimant’s symptom claims). “The clear and
11 convincing [evidence] standard is the most demanding required in Social Security
12 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*
13 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

14 Factors to be considered in evaluating the intensity, persistence, and limiting
15 effects of a claimant’s symptoms include: (1) daily activities; (2) the location,
16 duration, frequency, and intensity of pain or other symptoms; (3) factors that
17 precipitate and aggravate the symptoms; (4) the type, dosage, effectiveness, and
18 side effects of any medication an individual takes or has taken to alleviate pain or
19 other symptoms; (5) treatment, other than medication, an individual receives or has
20 received for relief of pain or other symptoms; (6) any measures other than

1 treatment an individual uses or has used to relieve pain or other symptoms; and (7)
2 any other factors concerning an individual's functional limitations and restrictions
3 due to pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7–8; 20 C.F.R.
4 § 404.1529(c). The ALJ is instructed to “consider all of the evidence in an
5 individual's record,” “to determine how symptoms limit ability to perform work-
6 related activities.” SSR 16-3p, 2016 WL 1119029, at *2.

7 The ALJ found Claimant's medically determinable impairments could
8 reasonably be expected to cause some of the alleged symptoms; however,
9 Claimant's statements concerning the intensity, persistence, and limiting effects of
10 those symptoms were not entirely consistent with the medical evidence and other
11 evidence in the record. Tr. 19. In arriving at this conclusion, the ALJ considered
12 several of the factors described above.

13 The ALJ found that Claimant's mental health complaints were out of
14 proportion to the objective medical evidence. Tr. 20. Claimant contradicted
15 herself when and whether she was using methamphetamine and marijuana. *Id.*
16 She reported auditory hallucinations, yet was attentive and completely oriented on
17 exam. *Id.* In September 2020, she reported smoking THC yet had a euthymic
18 mood and full affect, logical thought, within normal limit of cognition, displayed
19 average intelligence, and had normal insight and judgment. *Id.* Despite allegations
20 of disabling depression and PTSD related symptoms, Claimant was not fully

1 compliant with her treatment. Tr. 20-21. While Claimant has issues with
2 substance abuse and medication compliance, she shows appropriate / normal mood
3 and within normal limit cognition. Tr. 21. The ALJ also noted that there is a
4 situational component to Claimant's mental condition, rather than due solely to her
5 medically determinable impairments. Tr. 21.

6 The Court finds the ALJ provided clear and convincing reasons supported by
7 substantial evidence in the record to discount Claimant's subjective symptom
8 testimony.

9 **B. Medical Opinion Evidence**

10 Claimant challenges the ALJ's evaluation of Thomas Genthe, Ph.D.'s
11 medical opinion. Tr. 11 at 10-20.

12 As an initial matter, for claims filed on or after March 27, 2017, new
13 regulations apply that change the framework for how an ALJ must evaluate
14 medical opinion evidence. 20 C.F.R. § 416.920c(c); *see also Revisions to Rules*
15 *Regarding the Evaluation of Medical Evidence*, 2017 WL 168819, 82 Fed. Reg.
16 5844-01 (Jan. 18, 2017). The ALJ applied the new regulations because Plaintiff
17 filed her Title XVI claim after March 27, 2017.

18 Under the new regulations, the ALJ will no longer "give any specific
19 evidentiary weight ... to any medical opinion(s)." *Revisions to Rules*, 2017 WL
20 168819, 82 Fed. Reg. 5844-01, 5867-68. Instead, an ALJ must consider and

1 evaluate the persuasiveness of all medical opinions or prior administrative medical
2 findings from medical sources. 20 C.F.R. § 416.920c(a)-(b). The factors for
3 evaluating the persuasiveness of medical opinions and prior administrative medical
4 findings include supportability, consistency, relationship with the claimant,
5 specialization, and “other factors that tend to support or contradict a medical
6 opinion or prior administrative medical finding” including but not limited to
7 “evidence showing a medical source has familiarity with the other evidence in the
8 claim or an understanding of our disability program’s policies and evidentiary
9 requirements.” 20 C.F.R. § 416.920c(c)(1)-(5).

10 The ALJ is required to explain how the most important factors,
11 supportability and consistency, were considered. 20 C.F.R. § 416.920c(b)(2).
12 These factors are explained as follows:

13 (1) *Supportability*. The more relevant the objective medical evidence and
14 supporting explanations presented by a medical source are to support his
15 or her medical opinion(s) or prior administrative medical finding(s), the
more persuasive the medical opinions or prior administrative medical
finding(s) will be.

16 (2) *Consistency*. The more consistent a medical opinion(s) or prior
17 administrative medical finding(s) is with the evidence from other medical
18 sources and nonmedical sources in the claim, the more persuasive the
medical opinion(s) or prior administrative medical finding(s) will be.

19 20 C.F.R. § 416.920c(c)(1)-(2).
20

1 The ALJ may, but is not required to, explain how “the other most persuasive
2 factors in paragraphs (c)(3) through (c)(5)” were considered. 20 C.F.R.
3 § 416.920(c)(b)(2). However, where two or more medical opinions or prior
4 administrative findings “about the same issue are both equally well-supported ...
5 and consistent with the record ... but are not exactly the same,” the ALJ is required
6 to explain how “the most persuasive factors” were considered. 20 C.F.R.
7 § 416.920(c)(b)(2).

8 These regulations displace the Ninth Circuit’s standard that require an ALJ
9 to provide “specific and legitimate” reasons for rejecting an examining doctor’s
10 opinion. *Woods v. Kijakazi*, 32 F.4th 785, 787 (9th Cir. 2022). As a result, the
11 ALJ’s decision for discrediting any medical opinion “must simply be supported by
12 substantial evidence.” *Id.*

13 Dr. Genthe assessed Claimant with marked to severe impairment in several
14 areas of functioning. Tr. 286-87. The ALJ found this assessment neither well
15 supported nor consistent with the record. Tr. 21. The ALJ also noted that Dr.
16 Genthe reviewed no records. Tr. 21. As a result, Dr. Genthe did not have full
17 knowledge of the longitudinal record. *Id.* The ALJ pointed out the contradictions
18 in methamphetamine use reported to Dr. Genthe and at other places in the record.
19 Tr. 21-22. Dr. Genthe claimed deficits in cognitive functioning on exam which
20 contradicted her performance on mental status exams throughout the record which

1 primarily showed within normal limit cognition. Tr. 22. Dr. Genthe also assessed
2 marked to severe limitations in several areas of functioning which was inconsistent
3 with the record that showed improvement in symptoms with medication. *Id.*
4 Finally, Dr. Genthe's opinion was inconsistent with claimant's activities including
5 the ability to tend to her personal care, perform a variety of chores, use public
6 transportation, and care for her dog including seeking care for it at a veterinarian
7 when needed. *Id.*

8 Moreover, the ALJ used Renee Eisenhower, PhD and Michael Brown, PhD's
9 opinions. Tr. 22. They both reviewed the record and their opinion is consistent
10 with the medical evidence. *Id.* The record showed improvement in mental health
11 symptoms with medication, that claimant consistently displayed intact cognition on
12 mental status exams regardless of substance use, claimant endorsed some problems
13 with social functioning, but she attended appointments independently and
14 interacted appropriately with providers. *Id.* Claimant's mental status exams
15 showed the Claimant as cooperative. *Id.* Claimant uses public transportation. *Id.*
16 Finally, the ALJ compensated for the Claimant's cognitive and social limitations in
17 the residual functional capacity assessment.

18 CONCLUSION

19 Having reviewed the record and the ALJ's findings, the Court concludes the
20 ALJ's decision is supported by substantial evidence and free of harmful legal error.

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1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Summary Judgment (ECF No. 11) is **DENIED**.

3 2. Defendant's Motion for Summary Judgment (ECF No. 12) is

4 **GRANTED.**

5 The District Court Executive is directed to enter this Order, enter judgment
6 accordingly, furnish copies to counsel, and **CLOSE** the file.

7 DATED December 20, 2022.



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Thomas O. Rice
THOMAS O. RICE
United States District Judge